

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
ARBEN GROUP, LLC,

X

Plaintiff,

Docket Number  
07 CIV 11472 (CLB)

-against-

**ANSWER TO  
COUNTERCLAIM**

HOOVER TREATED WOOD PRODUCTS, INC.,

Defendant.

\_\_\_\_\_  
HOOVER TREATED WOOD PRODUCTS, INC.,

X

Third Party Plaintiff

-against-

INTERNATIONAL PAPER COMPANY,

Third Party Defendant

\_\_\_\_\_  
X

Plaintiff, Arben Group, LLC, ("Arben"), by its attorneys, Arthur J. Semetis, P.C., answers the Counterclaim (the "Counterclaim") of Third Party Defendant, International Paper Company, ("IPC"), as follows:

**AS AND FOR A RESPONSE TO THE  
COUNTERCLAIM**

1. Denies the truth of the allegations contained within paragraph 18 of the Counterclaim as they pertain to Arben and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained within paragraphs 18 of the Counterclaim as they apply to Hoover Treated Wood Products.

**AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE**

2. The Counterclaim fails to state a cause of action upon which relief may be granted.

**AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE**

3. Upon information and belief, IPC is barred from recovery in this proceeding by the doctrine of waiver.

**AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE**

4. Upon information and belief, IPC is barred from recovery in this proceeding by the doctrine of laches.

**AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE**

5. Upon information and belief, IPC is barred from recovery in this proceeding by the doctrine of unclean hands.

**AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE**

6. Upon information and belief, IPC failed to mitigate its damages.

**AS AND FOR ITS SIXTH AFFIRMATIVE DEFENSE**

7. Upon information and belief, there is no cognizable causation between the damage claimed by IPC and any act or omission by Arben.

**AS AND FOR ITS SEVENTH AFFIRMATIVE DEFENSE**

8. Upon information and belief, the damages alleged by IPC were caused by the culpable conduct of some third person(s) over whom Arben neither had nor exercised control.

**AS AND FOR ITS EIGHTH AFFIRMATIVE DEFENSE**

9. IPC's claim for common law or implied indemnification is barred due to the lack of privity, or duty owed, as between Arben and IPC.

**AS AND FOR ITS NINTH AFFIRMATIVE DEFENSE**

10. Since there is no judgment against IPC, IPC's complaint is premature.

**AS AND FOR ITS TENTH AFFIRMATIVE DEFENSE**

11. The liability of Arben for non-economic loss shall not exceed the equitable share of Arben determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

**AS AND FOR ITS ELEVENTH AFFIRMATIVE DEFENSE**

12. Recovery, if any, on the Counterclaim shall be reduced by the amounts paid or reimbursed by collateral sources.

**AS AND FOR ITS TWELFTH AFFIRMATIVE DEFENSE**

13. Any injuries sustained by IPC were caused solely and wholly by reason of the carelessness and negligence of IPC, in that they did not take the usual, necessary and proper precautions and IPC was otherwise negligent and careless under the circumstances.

**AS AND FOR ITS THIRTEENTH AFFIRMATIVE DEFENSE**

14. If IPC recovers against Arben, then Arben will be entitled to an apportionment of responsibility for damages between and amongst the parties of this action and will be entitled to recover from each other party for its proportional share commensurate with any judgment, which may be awarded to IPC.

Dated: August 4, 2008  
New York, New York

ARTHUR J. SEMETIS, P.C.

By: 

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